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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MALHEUR

MALHEUR ENTERPRISE,  
Plaintiff,

vs.

ONTARIO SCHOOL BOARD 8C,  
Defendant

Case No.:

COMPLAINT FOR INJUNCTIVE RELIEF

Filing Fee: \$281.00

Not Subject to Mandatory Arbitration

Plaintiff alleges:

**PRELIMINARY STATEMENT**

1.

This is an action by Plaintiff Malheur Enterprise (“Plaintiff”) pursuant to the Oregon Public Records Law, ORS 192.311 *et seq.* (“OPRL”), to enjoin Defendant Ontario School Board 8C (“Defendant”) from unlawfully withholding public records and to order the production thereof.

**JURISDICTION**

2.

This court has subject-matter jurisdiction pursuant to ORS 192.427, ORS 192.431, and ORS 28.010.

**VENUE**

3.

Venue is appropriate in Malheur County because ORS 192.415 requires a case of this nature to be filed in the circuit court for the county in which the Defendant public body is located. Venue is also appropriate because Defendant conducts its regular sustained business in Malheur County, and its improper actions occurred there.

**PARTIES**

4.

1 Defendant Ontario School Board 8C, a group of elected directors having control of the Ontario district  
2 schools, is a public body located in Malheur County. Pursuant to ORS 192.311(2)(b), Defendant is also the  
3 custodian of the public records requested by Plaintiff.

4 5.

5 Plaintiff Malheur Enterprise is a newspaper serving the residents of Malheur County since 1909. The  
6 Enterprise is published by Malheur Media LLC, a wholly owned subsidiary of Wheatland Publishing Corporation.  
7 The Malheur Enterprise has been nationally recognized for its excellence in local reporting by the Scripps Howard  
8 Foundation, Society of Professional Journalists, Investigative Reporters and Editors, and the International Society of  
9 Weekly Newspaper Editors.

#### 10 BACKGROUND

11 6.

12 In 2019, Defendant received a complaint about alleged misconduct by two of its directors: Eric Evans and  
13 Derrick Draper. Defendant hired a law firm to investigate the complaint. An attorney prepared a report containing  
14 interviews with witnesses and other information.

15 7.

16 Defendant took no action against Director Evans or Director Draper and publicly disclosed the complaint  
17 and investigation report.<sup>1</sup>

18 8.

19 Defendant employs Nikki Albisu, an executive officer known as a superintendent, to implement its  
20 policies.

21 9.

22 Lisa Longoria is a principal who oversees operations at Ontario Middle School, a middle school under  
23 Defendant's control.

24 10.

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26  
27 <sup>1</sup> See Ontario School Board Lawyer Findings, Argus Observer (Sept. 24, 2019), <https://bit.ly/35NDTFi>.

1 Dr. Jodi Elizondo is a principal who oversees operations at Ontario High School, a high school under  
2 Defendant's control.

3 11.

4 In or about March 2021, Defendant received a complaint made by Superintendent Albisu of alleged  
5 misconduct directed towards her by two of its directors: Eric Evans and Derrick Draper. Defendant caused the  
6 complaint to be investigated and the findings of the investigation reduced to writing.

7 12.

8 In or about April 2021, Defendant received two complaints made by Principal Longoria and Principal  
9 Elizondo of alleged misconduct directed toward Principal Longoria by three of its directors: Eric Evans, Derrick  
10 Draper, and Craig Geddes. Defendant caused the complaints to be investigated and the findings of the investigation  
11 reduced to writing.

12 13.

13 On April 8, 2021, Liliana Frankel, a reporter for Plaintiff, submitted an OPRL request on behalf of Plaintiff  
14 to Defendant via email (hereinafter, the "First Request"). Plaintiff's First Request asked for "any complaints against  
15 the Board or individual Board members submitted to the Board of Directors from the last 12 months." The First  
16 Request also informed Defendant that the requested documents related to a matter of considerable public interest  
17 and would be used to prepare a report to the Malheur County public. *See Exhibit 1.*

18 14.

19 On April 16, 2021, Defendant denied the First Request for the complaints. Defendant cited ORS  
20 192.355(1), the OPRL exemption for internal advisory communications. *See Exhibit 2.*

21 15.

22 On April 15, 2021, Les Zaitz, editor and publisher for Plaintiff, wrote to Defendant contesting its  
23 application of the internal advisory exemption and explaining that "the integrity of the Ontario School Board is a  
24 matter of substantial public interest." *See Exhibit 3.*

25 16.

1 On April 20, 2021, Defendant convened a public meeting and in open session passed a Motion to Censure  
2 Director Evans and Director Draper, characterizing their actions as “inconsistent with Board policies,” and  
3 describing their conduct toward Superintendent Albisu as follows:

4 The Ontario School District Board of Directors understands that it is the Board’s responsibility  
5 to monitor the behavior of each Board Member acting in the capacity of Board Member. Board  
6 Members have a public responsibility to conduct themselves responsibly with respect to  
7 interactions with school district employees, including the Superintendent. This public  
8 responsibility does not allow Board Members to engage in conduct that violates Board policy  
9 regarding interactions with District employees.

10 In consideration of the above, the Board of Directors has determined that Directors Evans and  
11 Draper, elected members of the Board of Directors, acted in a manner inconsistent with  
12 the policies of this Board and the District by engaging in conduct towards Superintendent  
13 Albisu that violated Board Policy AC- Nondiscrimination and the Superintendent/Board  
14 Operating Agreement.

15 The Board of Directors has further determined that Director Draper acted in a manner  
16 inconsistent with the policies of this Board and the District by engaging in conduct towards  
17 Superintendent Albisu that violated Board Policy- BBF (Board member Standards of Conduct).  
18 In consideration thereof, the Board of Directors of the Ontario School District do hereby  
19 condemn the conduct and actions of Directors Draper and Evans, and by passage of this Motion  
20 to Censure, do hereby censure Directors Draper and Evans.

21 As a result, the Board will take the District’s “SafeSchools Nondiscrimination” training and  
22 will engage in mediation with Superintendent Albisu to mitigate the impact of these findings.<sup>2</sup>

23 17.

24 On April 20, 2021, Defendant also passed a motion authorizing the Chair to provide a response to the  
25 Superintendent Albisu regarding the complaint.<sup>3</sup>

26 18.

27 Other than the motions passed on April 20, 2021, Defendant has not provided information to the public  
28 about Superintendent Albisu’s complaint, the written report forming the basis of its decision-making, the details of  
the censured conduct, the impact of the directors’ condemned actions on school operations, nor how private  
mediation might address those impacts.

19.

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<sup>2</sup> Ontario School District 8C, *April 20th Open Session After Executive Session*, YouTube (Apr. 29, 2021),  
<https://youtu.be/zKEK1PeT8CE> (0:13–1:57); see also Les Zaitz, *Draper Quits Ontario School Board Ahead of  
Censure Vote; Evans Also Censured*, Malheur Enterprise (Apr. 21, 2021), <https://bit.ly/2T3aLqK>.

<sup>3</sup> *April 20th Open Session After Executive Session*, <https://youtu.be/zKEK1PeT8CE>, *supra*.

1 On April 26, 2021, Liliana Frankel, a reporter for Plaintiff, submitted an OPRL request on behalf of  
2 Plaintiff to Defendant via email (hereinafter, the “Second Request”). Plaintiff’s Second Request asked for “any and  
3 all communications between the Board and its agents and Superintendent Nicole Albisu or her agents regarding the  
4 April 20, 2021 Board meeting.” The Second Request informed Defendant that the requested documents related to a  
5 matter of considerable public interest and would be used to prepare a report to the Malheur County public. *See*  
6 **Exhibit 4.**

7 20.

8 On May 13, 2021, Defendant denied the Second Request as to the response Defendant provided to  
9 Superintendent Albisu. Defendant cited ORS 192.355(2)(a), the personal privacy exemption and ORS  
10 192.355(9)(a), the attorney-client privilege. *See Exhibit 5.*

11 21.

12 On May 13, 2021, Les Zaitz, editor and publisher for Plaintiff, wrote to Defendant contesting its  
13 application of the personal privacy exemption because “information relating to the conduct of a public official is  
14 under no color of law personal information.” Zaitz further explained that disclosure would serve the public interest  
15 in holding Defendant accountable for its actions. *See Exhibit 6.*

16 22.

17 On May 25, 2021, Defendant convened a public meeting and in open session passed a Motion to Censure  
18 Director Draper, characterizing his actions as “inconsistent with Board policies,” and describing his conduct towards  
19 Principal Longoria as follows:

20 The Ontario School District Board of Directors understands that it is the Board’s responsibility  
21 to monitor the behavior of each Board Member acting in the capacity of a Board Member. Board  
22 Members have a public responsibility to conduct themselves responsibly with respect to  
23 interactions with school district employees, including the Superintendent [sic]. This public  
24 responsibility does not allow Board Members to engage in conduct that violates Board policy  
25 regarding interactions with District employees. In consideration of the above, the Board of  
26 Directors has determined that Director Draper, an elected member of the Board of Directors,  
27 acted in a manner inconsistent with the policies of the Board and the District by engaging in  
28 conduct towards Principal Longoria that violated Board Policy AC- Nondiscrimination. In  
consideration thereof, the Board of Directors of the Ontario School District do hereby condemn

1 the conduct and actions of Director Draper, and by passage of this Motion to Censure, do hereby  
2 censure Director Draper.<sup>4</sup>

3 23.

4 On May 25, 2021, Defendant also passed a motion authorizing the Chair to “follow up” with Principal  
5 Elizondo and Principal Longoria regarding their complaints.<sup>5</sup>

6 24.

7 On or about June 2, 2021, Principal Lisa Longoria told Plaintiff she had not received information regarding  
8 the Board’s findings, nor had she been contacted by the Board Chair. Principal Longoria said, “I feel exhausted and  
9 drained, but hopeful that our work can return to focusing on what is best for students.”<sup>6</sup>

10 25.

11 Other than the motions passed on May 25, 2021, Defendant has not provided information to the public  
12 about the complaints filed by Principal Longoria and Principal Elizondo, the written reports forming the basis of its  
13 decision-making, the details of the censured conduct, the alleged impact of the director’s condemned actions on  
14 school operations, nor why they declined to censure the other two directors.

15 26.

16 On June 7, 2021, Les Zaitz editor and publisher for Plaintiff, submitted an OPRL request on behalf of  
17 Plaintiff to Defendant via email (hereinafter, the “Third Request”). Plaintiff’s Third Request asked for the  
18 investigation reports into the complaints made by Superintendent Albisu and Principal Longoria. *See Exhibit 7.*

19 27.

20 On June 7, 2021, Defendant denied the Third Request for the investigation reports and added that  
21 “summary reports from legal counsel” were also exempt. Defendant cited ORS 192.355(9)(a), the attorney-client  
22 privilege. *See Exhibit 8.*

23  
24 <sup>4</sup> Ontario School District 8C, *May 25 School Board Regular Meeting and Open Session*, YouTube (May 25, 2021),  
25 <https://youtu.be/ESAK1wmGad4> (1:27:20–1:30:24); *see also* Liliana Frankel, *Ontario School Board Censures*  
26 *Draper – Again*, Malheur Enterprise (June 2, 2021), <https://bit.ly/3gXgxSQ>.

27 <sup>5</sup> *May 25 School Board Regular Meeting and Open Session*, <https://youtu.be/ESAK1wmGad4>, *supra* (1:27:20–  
28 1:30:24).

<sup>6</sup> Frankel, *Ontario School Board Censures Draper – Again*, *supra*.

1 **THE PUBLIC’S INTEREST IN DISCLOSURE**

2 28.

3 Transparency regarding Defendant’s operations and activities facilitates the public’s understanding of how  
4 public business is conducted and allows the public to provide oversight of Defendant.

5 29.

6 The public has an interest in detecting and eradicating prohibited workplace discrimination against public  
7 employees. Elected officials who engage in prohibited workplace discrimination violate the public trust.

8 30.

9 The public has an interest in information about proven violations of the public trust committed by elected  
10 officials.

11 31.

12 Elected officials who engage in prohibited workplace discrimination against public employees abuse their  
13 power, and the public has an interest in a full and thorough airing of documented abuses by elected officials, as a  
14 safeguard against such abuses in the future.

15 32.

16 In May of 2021, a regular election was held for four of Defendant’s five seats. Seven candidates appeared  
17 on the ballot, three of whom were incumbent directors and four of whom were challengers. Incumbents in Malheur  
18 County usually run unopposed when seeking election to Boards such as Defendant’s.<sup>7</sup>

19 33.

20 Several candidates for Defendant’s Board referenced Defendant’s handling of complaints against its  
21 directors as one motivation for seeking elected office.<sup>8</sup>

22 **FIRST CLAIM FOR RELIEF**

23 **(Ordering Production of Documents in First Request)**

24 \_\_\_\_\_  
25 <sup>7</sup> *Incumbents Get Challenged for School Board Seats Across Malheur County*, Malheur Enterprise (Mar. 23, 2021),  
26 <https://bit.ly/3zRuCd4>.

27 <sup>8</sup> *Liliana Frankel, Ontario District’s Turmoil Fuels School Board Races*, Malheur Enterprise (Apr. 28, 2021),  
28 <https://bit.ly/3j80dS4>.

1 34.

2 Plaintiff incorporates those matters alleged in paragraphs 1 through 33 above.

3 35.

4 The burden is on the Defendant to sustain its action in denying the First Request.

5 36.

6 Plaintiff properly requested records in Defendant's possession and control.

7 37.

8 Defendant denied the First Request citing ORS 192.502(1), the OPRL exemption for internal advisory  
9 communications, which is established when all four of the following elements exist:

- 10 (a) The communication is within a public body or between public bodies and is advisory in nature;  
11 (b) The communication covers other than purely factual matters;  
12 (c) The communication is preliminary to any final agency determination of policy or action; and  
13 (d) The public's interest in encouraging frank communication between officials and employees of public  
14 bodies clearly outweighs the public's interest in disclosure.

15 38.

16 The cited exemption does not apply to the communications requested in the First Request.

17 39.

18 Defendant unlawfully withheld public records subject to disclosure in violation of its duties under OPRL.

19 40.

20 Pursuant to ORS 192.431(1), the court should enjoin Defendant from withholding the records and should  
21 order the Defendant to produce the improperly withheld records no later than ten days after entry of the court's  
22 order.

23 41.

24 Plaintiff is entitled to an award of its reasonable attorney fees pursuant to ORS 192.431(3).

25 **SECOND CLAIM FOR RELIEF**

26 **(Ordering Production of Documents in Second Request)**



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42.

Plaintiff incorporates those matters alleged in paragraphs 1 through 33 above.

43.

The burden is on the Defendant to sustain its action in denying the Second Request.

44.

Plaintiff properly requested records in Defendant's possession and control.

45.

Defendant denied the Second Request citing ORS 192.355(2)(a), the OPRL exemption for information of a personal nature, which is established when all three of the following elements exist:

- (a) The information is personal in nature, such as but not limited to that kept in a personal, medical, or similar file;
- (b) Public disclosure would constitute an unreasonable invasion of privacy; and
- (c) The public interest does not nevertheless require disclosure.

46.

The personal privacy exemption does not apply to the information requested in the Second Request.

47.

Defendant also cited ORS 192.355(9) and ORS 40.225, the attorney-client privilege, in its denial of the Second Request.

48.

The attorney-client privilege applies when two conditions are met:

- (a) The communications must be confidential, that is, a communication not intended to be disclosed to third persons other than to those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication; and
- (b) The communication must be made for the purpose of facilitating the rendition of professional legal services to the client.

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55.

The burden is on the Defendant to sustain its action in denying the Third Request.

56.

Plaintiff properly requested records in Defendant’s possession and control.

57.

Defendant cited ORS 192.355(9) and ORS 40.225, the attorney-client privilege, in its denial of the Third Request.

58.

The attorney-client privilege applies when two conditions are met:

- (a) The communications must confidential, that is, a communication not intended to be disclosed to third persons other than to those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication; and
- (b) The communication must be made for the purpose of facilitating the rendition of professional legal services to the client.

59.

However, for purposes of OPRL, even if the attorney-client privilege applies, it does not exempt factual information from disclosure if all of the following criteria are met:

- (a) The information is not otherwise exempt from disclosure; and
- (b) The information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;
- (c) The information was not compiled in preparation for litigation, arbitration, or an administrative proceeding likely to be initiated or actually initiated; and
- (d) The holder of the privilege has made or authorized a public statement characterizing or partially disclosing the factual information.<sup>10</sup>

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<sup>10</sup> See ORS 192.502(9)(b).

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60.

The attorney-client privilege does not apply to the records sought nor to any factual information contained therein.

61.

Defendant unlawfully withheld public records subject to disclosure in violation of its duties under OPRL.

62.

Pursuant to ORS 192.431(1), the court should enjoin Defendant from withholding the records and should order the production of the improperly withheld records no later than ten days after entry of the court’s order.

63.

Plaintiff is entitled to an award of its reasonable attorney fees pursuant to ORS 192.431(3).

64.

WHEREFORE, Plaintiff prays for judgement as follows:

1. Enjoining the Defendant from withholding the requested records and ordering the production thereof no later than ten days after entry of the court’s order.
2. Requiring the waiver of fees for the inspection and copying of the records.
3. Awarding Plaintiff its reasonable attorney fees, costs and disbursements incurred herein.
4. Pursuant to ORS 192.431(2), except as to causes the court considers of greater importance, giving this proceeding precedence on the docket over all other causes and assigning it for hearing and trial at the earliest practicable date and expediting it in every way.
5. Awarding any other relief the court considers just and equitable.

DATED this 23<sup>rd</sup> day of June, 2021.

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

By s/ Ellen Osoinach

Ellen Osoinach, OSB# 024985  
Telephone: 503-213-3949  
E-mail: [esosinach@rcfp.org](mailto:esosinach@rcfp.org)

Attorney for Plaintiff

# MALHEUR ENTERPRISE

**The Voice of Malheur County**

(541) 473-3377 293 Washington St. W. Vale OR 97918

April 8, 2021

195 SW 3<sup>rd</sup> Ave  
Ontario, Oregon  
97914

DELIVERED VIA EMAIL

Re: PUBLIC RECORDS REQUEST

Dear Chair Corn,

Pursuant to the Oregon Public Records Law, the Enterprise requests an electronic copy of the following public records in the possession or control of the Ontario School Board:

1. Any complaints against the Board or individual Board members submitted to the Board of Directors from the last 12 months. This includes but is not limited to complaints submitted by any employee of the Ontario School District, and any patron – parent, student, or otherwise – of the Ontario School District.

These documents relate to a matter of considerable public interest and will be used to prepare a report to the Malheur County public. As such, I ask that you waive any fees for production of these public records by finding that their disclosure primarily serves the public.

If you elect not to waive the fees, please provide me with an estimate of your actual costs to comply with this request. If you need clarification, have questions, or **wish to discuss how to narrow the request** while producing meaningful public records, I am available for such a conversation.

Otherwise, I look forward to your response as proscribed by Oregon law.

Thanks!

Liliana Frankel  
Reporter, Malheur Enterprise  
Email: [liliana@malheurenterprise.com](mailto:liliana@malheurenterprise.com)

## RE: Public records request - response

Renae Corn <rcorn@fmtc.com>

Fri 4/16/2021 1:35 PM

To: Les Zaitz <les@malheureenterprise.com>

Good afternoon Mr. Zaitz,

Thank you for this additional information. The District will continue to maintain its position that the documents are exempt from disclosure pursuant to ORS 192.355(1) and cannot provide the complaints at this time for that reason.

Thank you,  
Renae Corn

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**From:** Les Zaitz [mailto:les@malheureenterprise.com]

**Sent:** Thursday, April 15, 2021 9:52 AM

**To:** 'Renae Corn'

**Cc:** Liliana Frankel

**Subject:** Public records request - response

Good morning, Renae.

Please see the attached letter for your consideration.

Regards,

Les Zaitz  
Editor & Publisher  
Malheur Enterprise

Remote work contact: (541) 421-3031

*www.malheureenterprise.com*

# MALHEUR ENTERPRISE

## The Voice of Malheur County

(541) 473-3377

PO Box 310 \* Vale OR 97918

Renaë Corn, Chair  
Ontario School Board  
Ontario, Oregon

April 15, 2021

Dear Renaë,

On April 8, 2021, the Enterprise requested certain public records from you: *“Any complaints against the Board or individual Board members submitted to the Board of Directors from the last 12 months. This includes but is not limited to complaints submitted by any employee of the Ontario School District, and any patron – parent, student, or otherwise – of the Ontario School District.”*

You responded on April 14, 2021: *“The Board is in possession of the requested documents; however, the Board has been advised that the documents are exempt from disclosure pursuant to ORS 192.355(1) and cannot provide the complaints at this time for that reason.”*

I write asking that you reconsider your position for three reasons:

- a. The exemption you cited does not apply to the documents cited.
- b. That even if the exemption applied, you are not required to withhold the records.
- c. That even if the exemption applied, the public interest in disclosure weighs in favor of releasing this material to the public.

The exemption you cited relates to *“communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. The exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.”*

You are not required to invoke the exemption. You have the discretion to do so. This means the statement that you *“cannot”* provide the complaints isn’t a choice mandated by law, but rather a choice to do so.

Public bodies such as the Ontario School Board are bound by the guidance of the Oregon Attorney General’s Public Records Manual. The PRM is clear that the exemption you cite is to be applied with restraint and narrowly. *“The court’s opinions indicate that there must be a strong showing of a ‘chilling effect’ based on something more than potential embarrassment to the public body or staff.”* (PRM – Discussion – ORS 355.455(1). )

The attorney general goes on to explain: *“We emphasize that a public body asserting this exemption should be able to explain why the particular circumstances show that disclosure would deter employees from offering recommendations and opinions that are part of their job duties.”* (PRM – Discussion – ORS 355.455(1). )

There has been no such showing and it seems unlikely there could be. These complaints were not requested or directed by the board. The board is both the object and recipient of the complaints.

The attorney general lays out that five conditions must be met for this exemption to apply. The attorney general is clear that ALL five must be met – not just a selection. They include:

- \*The information is a frank communication within a public body or between public bodies.

- \*It is of an advisory nature (e.g., recommendations or opinions)

- \*It is communicated preliminary to any final agency action

- \*It covers other than purely factual materials

- \*In the particular instance, the public interest in encouraging frank communication clearly outweighs the public interest in disclosure.

The complaints made against Ontario School Board members by employees or patrons of the Ontario School District do not meet ANY of these circumstances. This exemption is intended to afford subordinates a chance to provide decision makers their candid opinions and recommendations about a pending policy decision or other agency decision, although it seems rare that the board has ever taken such guidance as confidential. Complaints under no color can be considered to be a recommendation. Indeed, the complaints themselves in theory trigger – not follow - action by the Ontario School Board.

But even if you could successfully argue these complaints are exempt, you must still make a showing that the public interest requires the secrecy. I won't elaborate in detail at this point the public interest in disclosure, but the very public turmoil involving board members and that some Ontario School Board members are facing election in May makes a compelling reason that no complaint against a board member should be hidden from public view.

The Enterprise strongly believes your decision to withhold these documents is contrary to good public policy. More importantly, it is contrary to Oregon law. We are prepared to move forward if you elect to stand by your original exemption claim.

The integrity of the Ontario School Board is a matter of substantial public interest. For the board to hide complaints against its members ahead of an election only gives the public more reason to be concerned.

I am available to discuss this in more detail with you or the board's counsel.

With regards,

Les Zaitz, Editor and Publisher  
Malheur Enterprise  
les@malheurenterprise.com



# MALHEUR ENTERPRISE

**The Voice of Malheur County**

(541) 473-3377 293 Washington St. W. Vale OR 97918

April 26, 2021

195 SW 3<sup>rd</sup> Ave  
Ontario, Oregon  
97914

DELIVERED VIA EMAIL

Re: PUBLIC RECORDS REQUEST

Dear Chair Corn,

Pursuant to the Oregon Public Records Law, the Enterprise requests an electronic copy of the following public records in the possession or control of the Ontario School Board:

1. Any and all communication between the Board or its agents and Superintendent Nicole Albisu or her agents regarding the April 20, 2021 Board meeting. This includes but is not limited to emails, text messages, and any other written communication in any form, including attachments.

These documents relate to a matter of considerable public interest and will be used to prepare a report to the Malheur County public. As such, I ask that you waive any fees for production of these public records by finding that their disclosure primarily serves the public.

If you elect not to waive the fees, please provide me with an estimate of your actual costs to comply with this request. If you need clarification, have questions, or **wish to discuss how to narrow the request** while producing meaningful public records, I am available for such a conversation.

Otherwise, I look forward to your response as proscribed by Oregon law.

Thanks!

Liliana Frankel  
Reporter, Malheur Enterprise  
Email: [liliana@malheurenterprise.com](mailto:liliana@malheurenterprise.com)

**From:** Renae Corn <rcorn@fmtc.com>  
**Sent:** Thursday, May 13, 2021 10:28 AM  
**To:** Les Zaitz <les@malheureenterprise.com>  
**Subject:** RE: Response to Public Records Request.pdf

Good morning Mr. Zaitz,

The letter from the Board to Superintendent Albisu contains confidential information of a personal nature. In the communication this morning, it should have noted instead that the letter is exempt from disclosure pursuant to 192.355(2)(a).

Thank you,  
Renae Corn

---

**From:** Les Zaitz [mailto:les@malheureenterprise.com]  
**Sent:** Thursday, May 13, 2021 9:42 AM  
**To:** Renae Corn  
**Subject:** Re: Response to Public Records Request.pdf

Renae,  
To be clear, you are declaring that a letter from the Ontario School Board to Superintendent Nikki Albisu regarding the findings of an investigation into her complaint is protected by attorney-client privilege? Or are you maintaining that document is an "internal advisory communication"?  
Your clarity on this would be appreciated.

Les Zaitz  
Editor & Publisher  
Malheur Enterprise

Remote work contact: (541) 421-3031

[www.malheureenterprise.com](http://www.malheureenterprise.com)

---

**From:** Renae Corn <rcorn@fmtc.com>  
**Sent:** Thursday, May 13, 2021 9:29 AM  
**To:** Les Zaitz <les@malheureenterprise.com>  
**Subject:** Response to Public Records Request.pdf

Good morning Mr. Zaitz,

On behalf of the Ontario School District, please find the following response to the April 26, 2021 public records request for: "Any and all communication between the Board or its agents and Superintendent Nicole Albisu or her agents regarding the April 20, 2021 Board meeting." Some of the requested documents are exempt from disclosure pursuant to ORS 192.355(1). Some of the requested documents are exempt from disclosure pursuant to ORS 192.355(9)(a), as they are attorney-client privileged. Those documents that have been identified as exempt from disclosure cannot be provided at this time. I have enclosed those documents that are not subject to these exemptions. The redaction on one of the attached documents relate to information that is exempt from disclosure pursuant to ORS 192.355(9)(a)

Thank you,  
Renae Corn

## Re: Response to Public Records Request.pdf

Les Zaitz <les@malheureenterprise.com>

Thu 5/13/2021 10:53 AM

To: Renae Corn <rcorn@fmtc.com>

Renae,

Under the Oregon Public Records Law, you are required by law to segregate exempt material and providing the balance of the information.

See ORS 192.338: If any public record contains material which is not exempt under ORS [192.345 \(Public records conditionally exempt from disclosure\)](#) and [192.355 \(Public records exempt from disclosure\)](#), as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

In any event, information relating to the conduct of a public official is under no color of law "personal information."

I am troubled that you and your attorneys first ignore the law's requirement - a legal mandate - to provide a response within 5 days. I am troubled with this shifting claim in exemptions, which leaves the impression that you and your attorneys are "exemption shopping" to seek any way to keep the public's business from the public.

As I mentioned to you in our telephone conversation, the exemptions under the Oregon Public Records Law are discretionary. You are not required to invoke them. As the Oregon attorney general says in the Oregon Public Records Manual, "A public body is ordinarily free to disclose a record or information that is exempt from disclosure."

I implore you to consider the trust of the Ontario school district patrons as you consider your actions to favor secrecy over accountability.

Regards,

Les Zaitz  
Editor & Publisher  
Malheur Enterprise

Remote work contact: (541) 421-3031

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**Re: Board meeting - follow-up questions**

Les Zaitz <les@malheurenterprise.com>

Mon 6/7/2021 9:14 AM

To: 'Renaë Corn' <rcorn@fmtc.com>

Renaë,

I am following up on the board's decision to withhold the investigation report regarding the allegations in the complaint submitted by Nikki Albusu.

You have advised the board will not disclose the report. I would appreciate if you or your legal counsel would please cite the statutory authority - the exemption under the Oregon Public Records Law - that the board is relying on to withhold the report. And if this is the same basis for which the board intends to withhold the investigation report into the Lisa Longoria investigation report, please cite whether the same authority is the basis or some other basis. I am happy to provide you a formal public records request for that Longoria investigation report if you prefer.

I look forward to your response.

Thanks.

Les Zaitz  
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Wyatt Baum <wyatt@baumsmith.com>

Mon 6/7/2021 1:47 PM

To: Les Zaitz <les@malheureenterprise.com>

Cc: Renae Corn <rcorn@ontario.k12.or.us>

Mr. Zaitz,

Chair Corn forwarded me your email of today's date requesting clarification on whether the District would be releasing the investigation reports regarding the complaints submitted by Superintendent Albisu and Principal Longoria. The investigations and summary reports from legal counsel are subject to attorney-client privilege and attorney work product and as such are exempt from disclosure pursuant to ORS 192.355(9)(a).

If you have any other questions, please let me know.

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